Court of Queen's Bench of Alberta

Citation: R v Mathers, 2021 ABQB 968

Date: 20211207
Docket: 210453643Q1
Registry: Calgary

Between:

Her Majesty the Queen

Crown

- and -

Christopher Douglas Mathers

Accused

Oral Reasons for Sentence
of the
Honourable Mr. Justice E.C. Wilson

Introduction

[1] Once again, a Calgary court is called upon to sentence a man who stabbed his victim to death in downtown Calgary. Killings by firearms and knives are almost at an epidemic rate in downtown Calgary. This killing, like many others, occurred in daylight hours along the C-train line, with a number of witnesses close by. Public safety and the protection of the public looms large as a sentencing consideration, therefore.

Facts

[2] Everyone but the accused was going about their lawful business peacefully and causing no grief nor anxiety to others.

[3] The killing, like many these days, was caught on CCTV.

[4] The scene along the C-train line was not heavily populated at the 7 Avenue and 11th Street Southwest location.

[5] The victim, Russell Younker, and his companion, Sarah Brodeur, are seen to slowly cross 11th Street from east to west along the south side of 7 Avenue Southwest. They then turned to face north, preparing to cross 7 Avenue.

[6] Meanwhile, the accused and his companion, James Staub, had also followed the same route to cross 11th Street but were some distance behind Younker and Brodeur.

[7] At some point, the accused recognized Younker, but it appears that Younker was oblivious to the accused's presence.

[8] The accused had stopped, ended up standing some distance approximately 15 feet behind Younker and Brodeur.

[9] The accused said nothing and did nothing to attract Younker's attention. I find this was a deliberate decision.

[10] Younker and Brodeur waited at the curb as the C-train arm came down and a C-train passed.

[11] The accused can be seen extracting a knife from his backpack and holding it in his right hand.

[12] After the C-train arm went up, Younker and Brodeur started walking north across 7 Avenue.

[13] The accused then started to follow, with Staub lingering slowly behind.

[14] The accused quickened his pace, and at a point approximately halfway across the intersection, quickly ran forward, closing the gap upon the unsuspecting Mr. Younker.

[15] The video shows the accused's left hand make contact with Younker's back. Simultaneously, his right hand holding the knife then plunges forward. Two stabbing motions can be seen. One stab entered the right rear rib cage area and into the abdomen, causing injury to Younker's diaphragm, liver and right kidney. The second stab caused an incised wound to Younker's right forearm.

[16] The accused said nothing to Mr. Younker before, during or after his deadly attack.

[17] CCTV footage shows the accused not pausing at all after his attack, but he quickly jogged west, gripping the knife and departed the area. Still photos captured him running, while holding the knife and with his hoodie over his head.

[18] As the accused ran away from his victim, CCTV shows Younker and Brodeur milling about. From the admitted fact, I read the following from paragraphs 17 and 18:

> As Mathers escaped, Younker grabbed at his own back. Younker moved in a stumbling fashion back down toward the part of the sidewalk closest to the tracks,

> clutching his back, and apparently looking to see who had struck him. Meanwhile, Mathers ran west north of the tracks, out of view. Video shows Younker would have only been able to see the back of a dark clad hooded figure running away, at best.
>
> Brodeur thought Mathers, whom she did not know, had pushed Younker. She asked Younker if "the guy" had pushed him. Younker told her: "No, I think he stabbed me." She offered to call 911. He said he just needed to go clean up, and that he did not need help. Younker wrapped his jacket around his waist, and Brodeur saw blood coming down Younker's leg. Nobody stopped to assist, even though others walked by. Younker told her he was okay. Younker walked east across the street and went by the Kerby Station, while Brodeur waited around the corner. After about two minutes, she got on the C-train and left.

[19] The stabbing occurred at approximately 6:00 PM.

[20] In the admitted fact, it appears that at 6:14 PM, someone spotted Mr. Younker in medical distress about a half a block east of the stabbing location. Other citizens happened along to offer their assistance. Police and EMS arrived by 6:30 PM. Mr. Younker was transported to hospital.

[21] En route, CPR was started, as Mr. Younker's pulse was lost. After arrival at the Foothills Hospital, emergency surgical intervention occurred, but despite the best medical efforts, Mr. Younker passed away at 9:52 PM, less than four hours after being stabbed.

[22] The autopsy identified the nature of the abdominal stab wound as a knife cutting through the skin, injuring the 11th rib and then through the body and organs of Mr. Younker. The wound travelled from the back to the front, right to left and slightly downwards. Due to the surgical intervention, the actual depth of the wound could not be accurately determined. However, it is admitted that this stab wound caused Mr. Younker's death.

[23] At the time of his death, Mr. Younker was 49 years old, stood five foot 10 inches and weighed 231 pounds.

[24] In the preceding three years, he had suffered addiction difficulties and abused fentanyl. Indeed, the toxicology report indicates that, at the time of death, Mr. Younker had fentanyl and methamphetamine in his system. Mr. Younker had also a number of outstanding criminal charges at the time of death.

[25] On the date of this killing, the accused was 34 years, stood six three and weighed 220 pounds. He was thus younger, taller and a bit slimmer than Mr. Younker. At the time of this homicide, the accused was unemployed and had been since he was 18. He claimed to smoke a quarter of an ounce of marijuana daily.

[26] The accused and the victim knew each other and had been friends for 15 years. They had worked together and had smoked dope together. Younker would take the accused out to Black Diamond and show the accused his gun collection. However, their friendship started to encounter difficulties once the victim became addicted to fentanyl and methamphetamine.

[27] The accused had loaned the victim some $1,200 over the course of a year, and when he wouldn't give Younker any more, the victim returned his favour by breaking into the accused's apartment and stealing property and cash in January, 2020. The accused identified Mr. Younker from CCTV footage. Younker was charged with that offence of break and enter, in an

Information sworn on February 13, 2020. Younker was arrested on this charge in July and then failed to appear on August 28, 2020, and the matter went to warrant.

[28] How that break and enter charge from January, 2020 figured into this homicide occurring on April 15, 2021, a little less than a year and half later, was set out in the admitted facts at paragraphs 44 to 48:

> Shortly after Mathers reported Younker to the police for robbing him, Younker phoned him up and called him a "rat" and threatened to shoot him.
>
> Mathers understood Younker was robbing and threatening others of their associates as well but he took the threat to himself very seriously, although he did not report it to the police. After the threat, Mathers grew fearful of Younker.
>
> He learned Younker regularly showed up to the skate park downtown wearing a mask in 2020, and he understood Younker had to be there looking for him, because Mathers frequented the skate park often.
>
> He advised he stabbed Younker on April 15, 2021 to scare him off, rather than to kill him. He said he was sure Younker would know it was he who stabbed him, but did not explain how that might be, since Younker had conflicts with others, and Mathers approached Younker from behind, stabbed him silently while hooded, and ran immediately out of sight.
>
> Mathers claimed he thought that Younker and the female with Younker were at 11 Street and 7 Avenue Southwest to rob him, but the video evidence does not support that belief.

[29] Mathers advised police he had stabbed people before and was under the impression that people, and particularly Younker, wouldn't die because of our good medical system.

[30] Thus, the admitted fact has the accused, first claiming he only stabbed Mr. Younker to scare him off, having been previously threatened with being shot at some unknown time in the past year or, secondly, as some sort of pre-emptive strike to prevent Younker and Brodeur from robbing him. The second explanation is, as paragraph 47 states, contrary to the CCTV. It is, I find, patent nonsense.

[31] The first explanation also makes little sense, as the evidence is clear that Younker apparently had no idea who had attacked him. This is, as well, part of the admitted fact, at paragraph 46, earlier read by me.

[32] An accused who offers wholly inconsistent explanations for his actions and offers explanations which fly in the face of other admitted facts must understand that the Court cannot place much, if any, weight upon either explanation.

[33] But to be entirely clear, defence unequivocally admits there is no justification offered for this killing rooted in provocation or self-defence. The CCTV fully supports that admission, I find.

[34] The admission at paragraph 50 perhaps best explains the accused's mindset but also his awareness when he attacked the victim:

> The parties agree that Mathers had a general fear that Younker would shoot him, but also agree that Younker did not say he would shoot Mathers on April 15, 2021

> and that Younker objectively posed no immediate risk of harm to him at the time of the stabbing. Younker showed no signs of recognizing Mathers and was not threatening him in any way. No weapons were found with Younker's body and the video evidence does not support any suspicion that Brodeur might have taken a weapon with her when she and Younker parted.

[35] Indeed, I completely agree with defence that the accused came upon the victim solely by chance. There is no evidence that he expected to see the victim. It was pure happenstance. But having come across Mr. Younker, the accused then took advantage of the situation. He positioned himself such that he did not alert the victim to his presence and then, while Mr. Younker walked away, the accused ran up from behind and ambushed him and proceeded to stab him to death. See paragraph 51 of the admitted facts.

Analysis

[36] The accused had been charged with murder.

[37] Section 229(a)(ii) of the *Criminal Code* directs that a homicide becomes murder when the killer meant to cause the victim bodily harm that he knows is likely to cause death and is reckless whether death ensues or not.

[38] The parties explained why the accused pleaded guilty to manslaughter, with the Crown's agreement, at paragraph 52:

> The parties agree that Mathers intended to cause serious bodily harm to Younker that would need immediate medical assistance in order to preserve Younker's life, but he did not think the harm was such that it was likely to cause death if Younker received timely medical assistance. He was confident Younker would receive timely medical assistance because he committed the stabbing downtown in the light of day when there were many people around.

[39] Thus, two of the three elements for murder I find to be present, but the third required element for murder, i.e., subjective knowledge that the victim was likely to die is not present, by agreement.

[40] Accordingly, in the result, a conviction for manslaughter is sustained and a conviction for murder is legally impossible.

[41] Nevertheless, I am satisfied that with only the third element to murder missing, this planned and deliberate knife attack, coupled with the location of the stabbing into the abdomen, utilizing the obvious force required for such a deep penetration, coupled with the accused's decision to stab the victim twice, is a manslaughter that must be characterized as a "near murder" for sentencing purposes.

[42] Counsel agree that the *Regina v Laberge* analysis places this manslaughter in the most serious category, being an unlawful act which was likely to put the victim at risk of or cause life threatening injuries. I concur with counsel's assessment.

[43] In the recent decision of *Regina v Paranto*, 2021 SCC 46, which was released November 12, 2021, the Supreme Court of Canada said the following about the sentencing process, at paragraphs 10 to 12, with some case references omitted by myself:

> The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading "Fundamental principle". Accordingly, all sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principles of parity and individualization, while important, are secondary principles.
>
> Despite what would appear to be an inherent tension among these sentencing principles, this Court explained in *Friesen* that parity and proportionality are not at odds with each other. To impose the same sentence on unlike cases furthers neither principle, while consistent application of proportionality will result in parity. This is because parity, as an expression of proportionality, will assist courts in fixing on a proportionate sentence. Courts cannot arrive at a proportionate sentence based solely on first principles but, rather, must calibrate the demands of proportionality by reference to the sentences imposed in other cases.
>
> As to the relationship of individualization to proportionality and parity, this Court in *Lacasse* aptly observed:
>
> > Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances.
>
> Individualization is central to the proportionality assessment, whereas the gravity of a particular offence may be relatively constant, each offence is committed in unique circumstances by an offender with a unique profile. This is why proportionality sometimes demands a sentence that has never been imposed in the past for a similar offence. The question is always whether the sentence reflects the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case.

[44] The offender's degree of responsibility or as sometimes called his moral blameworthiness, must be determined for sentencing purposes. Both objective and subjective *mens rea* must be considered.

[45] In *Laberge*, 1995 ABCA 196, our Court of Appeal said this at paragraph 14:

> ...our criminal justice system is based on the premise that, all other things being equal, the more an offender's "intention" or "awareness" approaches the point that he knew or was wilfully blind to the fact that his unlawful act was not only likely to put the victim at risk of death but indeed to cause death the more culpable he is. Similarly, even absent proof of subjective *mens rea*, the more that the offender's conduct, on an objective basis, approaches the point where it can be said that he ought to have known, had he proceeded reasonably, that his unlawful act would be likely to cause life-threatening injuries as opposed to simply putting the victim at risk of bodily injury, the more culpable he is. In other words, the

> offender's moral blameworthiness and in turn the gravity of the offence are functions of the degree of fault.

[46] At paragraph 16, the Court said:

> In assessing subjective intent, it is entirely appropriate, indeed, essential that the trial judge consider what inferences, if any, must necessarily be properly drawn from the act and the surrounding circumstances. Subjective *mens rea* requires that the accused had intended the consequences of his or her acts or that knowing of the probable consequences of these acts, the accused had proceeded recklessly in the face of the risk. The requisite intent or knowledge may be inferred directly from what the accused said or says about his or her mental state or indirectly from the act and its circumstances.

[47] At paragraph 52 of the Admitted Facts, we gain significant insight into the accused's *mens rea*. I will read it again:

> The parties agree that Mathers intended to cause serious bodily harm to Younker that would need immediate medical assistance in order to preserve Younker's life, but he did not think the harm was such that it was likely to cause death if Younker received timely medical assistance. He was confident Younker would receive timely medical assistance because he committed the stabbing downtown in the light of day when there were many people around.

[48] I infer from this that the accused knew and appreciated that his intentional stabbing would require timely medical assistance in order to ensure Mr. Younker wouldn't die. And he felt that timely medical assistance would be assured because this attack occurred downtown in the light of day when there were many people around.

[49] So while he could best assure the required timely medical assistance by placing the call for help himself or asking someone to do it on his behalf, he chose not to. He simply ran away. He relied on others to know what had happened and to do the right thing, but he didn't know what Mr. Younkers' reaction might be, nor apparently that Mr. Younker may go somewhere where he may not be immediately spotted and where medical assistance might be delayed. The accused had not the slightest idea how much time was available before death would ensue, even with medical intervention.

[50] The accused's recklessness whether or not death would ensue is patently obvious. His explanation is rather ludicrous. The accused willingly courted the risk that Mr. Younker would die and yet, willingly, proceeded in the face of that risk. There is borderline wilful blindness on the issue of knowledge. I find the accused's moral blameworthiness to be extremely high.

[51] Assessing his degree of responsibility and the gravity of this offence requires some further inquiries.

[52] *Regina v Wakefield*, 2020 ABCA 352, at paragraph 28, directs that:

> Courts must consider the objective risk of injury, the subjective awareness of the risk, whether a weapon was used, the degree of force used, the extent of the victim's injuries, the degree of violence or brutality, the level of planning or deliberation, the complexity of the act, any provocation, and the duration of the act.

[53] I have already dealt with the issue of objective risk of injury and the accused's subjective awareness of risk. A knife was used. The admitted fact at paragraph 51 was that the accused carried this knife in his backpack, unlawfully, "for general protection purposes". The depth and location of the abdomen wound with the damage to the rib and organs speaks to the degree of force used. So does the fact that the accused stabbed his victim twice. The nature of this cold-blooded attack shows there was clear planning and premeditation. This was neither a spontaneous nor impulsive act. The accused tracked the unsuspecting victim across the street and ambushed him and then, in a cowardly way, just ran off to elude apprehension. His victim was unarmed. He was completely defenceless to this ambush attack. Committed as it was, in broad daylight in downtown Calgary, where all of us reasonably expect to move about without being ambushed, attacked and killed and thus, impairing public safety puts the foregoing circumstances of this killing into a category of a very grave offence committed in very grave circumstances.

Sentencing Factors

[54] The Crown provides a list of aggravating factors. I agree with many of them but not all. I agree that it is aggravating that:

(1) In response to being threatened by Mr. Younker that he would be shot, he made no complaint to the police months earlier, which could have resolved matters in a safe and reasonable fashion. Rather, he took advantage of a chance encounter to practice his own form of street corner justice, literally.

(2) He illegally carried a large knife concealed in his backpack, ready to be used in violence, should the situation present itself.

(3) There was planning and deliberation, albeit not anywhere near the time involved in *Regina v Hennessey*, 2010 ABCA 274.

(4) This was an ambush attack from behind upon a wholly unsuspecting victim, who was unarmed and who posed no threat to the accused at the time.

(5) The victim was deliberately stabbed twice, once in the abdomen, with the accused admittedly knowing the victim would need timely life-saving medical care to survive.

(6) He fled the scene without calling 911 or seeking assistance for his victim.

(7) He covered his head with his hoodie in an effort to conceal his identity and fled the province to avoid detection and arrest.

(8) He destroyed evidence – the knife – and got rid of some clothing to avoid detection.

[55] I do not accept that his admission to stabbing others in the past is aggravating. Even assuming that this claim is true, I do not know if, on those occasions, he had acted lawfully in self-defence or not.

[56] Nor do I accept that the victim's circumstances, by being a vulnerable person due to addictions, really played a role in this killing such that it could be viewed as an aggravating circumstance. The CCTV does not show the victim's walking or turning demonstrated that he was impaired and, thus, perhaps an easier target to overcome.

[57] Nor do I accept that the accused's dated record that includes violence should aggravate. He was convicted of two robberies, once when aged 16 and once when aged 17. The latter was 17 years prior to this killing. In 2009, as an adult, he was convicted of a common assault and received a suspended sentence with probation. In my view, these convictions for violence are simply too dated to allow me to find that they aggravate the situation.

[58] There are some significant mitigating factors here.

[59] Chief among them is his timely and early guilty plea. First, it must be noted that, once aware, via the media, that he was wanted for murder, he turned himself in to RCMP in B.C. on May 13, 2021. He was interviewed by police on May 14. After a couple of hours of not really saying anything useful to the police, he then "cracked" and confessed. He was transported back to Calgary.

[60] Mr. Lutz, QC and the Crown discussed the case and agreed that the accused would plead guilty to manslaughter and the case was set down before me in fairly short order, some six months after arrest and without any preliminary hearing occurring.

[61] The timely guilty plea also signifies remorse, which was reflected in the apology he expressed to the family in court on November 25, 2021.

[62] Lastly, and notwithstanding his decision to stab the victim to death, the killing was not of some random soul. The victim had previously threatened to shoot him. At least, therefore, there is some explanation for the accused's conduct, although not excusing the criminal conduct at all. But any mitigation on this point can only be very minor. That is because he also provided two other actual excuses that are demonstrably false, thus, leaving one to really wonder about the accused's true motivation to kill Mr. Younker.

Sentence Positions

[63] The Crown seeks a gaol sentence within the range of 10 to 12 years. The defence initially urged a sentence within a range of 5 to 7 years, but then submitted that a more accurate range here should be 6 to 8 years.

Case Review

[64] I am satisfied that our Court of Appeal in *Regina v Willier*, 2008 ABCA 33, has already ruled, after fixing a range of 8 to 12 years as being appropriate, given the following mix of factors for a 29-year-old mother of three children, who stabbed her victim to death and who pled guilty to manslaughter – albeit not in a timely way. In explaining this range, the Court said this, at paragraph 16:

> In reaching this conclusion, we have considered aggravating and mitigating factors. The aggravating factors are that the respondent brought knives to the residence, the deceased was stabbed four time in the abdomen, the deceased was unarmed, the respondent took no steps to assist the deceased and left the residence

> while the mortally wounded deceased was still alive. The mitigating factors are that the respondent entered a guilty plea, she has no criminal record, she cooperated in the investigation and she upgraded her education while in custody.

[65] It will be noted that there are some mitigating and aggravating factors there which are similar here, but there are also some clear dissimilarities. Here, the aggravating factor of a cold-blooded planned and deliberate attack, knowing of the life-threatening potential requiring medical intervention is not present in *Willier*. In our case, the accused acted without any indication of drug or alcohol impairment, which typically clouds judgment and leads often to impulsivity. Indeed, the facts in *Willier* appear to play out with significant alcohol consumption in the background, as do so many manslaughter cases. The *Willier* court then commenced its sentencing re-calculation starting at 8 years, i.e., the bottom of the range, before giving effect to pre-sentence custody.

[66] I note that in *Regina v Raspberry*, 2018 ABCA 128, the majority appears to also endorse the trial judge's view that, had it been a manslaughter without provocation in that case, the range for the manslaughter sentence was 8 to 12 years. It will be recalled that Raspberry was acquitted of murder but convicted of manslaughter, due to provocation on the part of the deceased. The excessive force used by the accused deprived him of the defence of self-defence. That excessive force involved the use of three knives, 23 stab wounds and 14 incised wounds. Raspberry's appeal from his 7-year sentence was dismissed. The majority found it to be within the range.

[67] In *Regina v Holloway*, 2014 ABCA 87, the majority noted, at paragraph 51, that panels of the Court of Appeal have previously referred to a range of 8 to 12 years. At paragraphs 47 and 48, the majority referenced appellate decisions in worse situations, which exceeded that range. See also *Regina v Roberts*, 2020 ABCA 434.

[68] In *Holloway*, the Court of Appeal upheld the 8-year sentence as not being demonstrably unfit for an accused, who, with others and while intoxicated, committed an armed home invasion and stabbed a defenceless victim to death. The 22-year-old accused with a prior record for violence was acquitted of murder at trial but convicted of manslaughter.

[69] In *Regina v Swampy*, 2017 ABCA 134, the Court of Appeal upheld the 8-year sentence for a single stab wound manslaughter as not being unfit. As with *Holloway*, the accused stabbed the victim once. Each of these two accused had been drinking significantly; thus, clouding judgment and awareness of consequences. Each went to trial on murder and each was convicted of manslaughter. Each had prior minimal records and each received mitigation upon invocation of the *Gladue* principles, which does not apply to Mr. Mathers.

[70] Of the remaining Alberta appellate decisions cited by the Crown, I find that the facts of *Regina v Anderson*, 2021 ABCA 135, and *Regina v Gray*, 2013 ABCA 237, to be so far removed from the facts before me that I do not find them helpful.

[71] The Alberta Court of Appeal decisions cited by the defence are also somewhat problematic for me. For example, *Regina v Laberge* was a case of a father killing his daughter through the use of blunt force trauma after the accused lost his temper. *Regina v Miller*, 2018 ABCA 356, was a case where a 20-year-old with no prior record and with an extremely promising future stabbed the victim while in a drug-induced psychosis. The Court of Appeal reduced his sentence to 5 years. But compare that decision to *Regina v Sorge*, 2018 ABPC 153, where the sentence on somewhat similar facts was 9 and a half years.

[72] I do recognize that, in these four cases, the accused pleaded guilty, and I also recognize that, in *Regina v Yellowknee*, 2017 ABCA 60, Mr. Justice Wakeling would have granted a one-third credit as the usual benefit for an earliest opportunity guilty plea. He cited some of his earlier dissenting opinions taking similar or graduated approaches, depending on the timing of the guilty plea. However, no majority of our Court of Appeal have taken this clear approach. I am bound by *stare decisis* to follow the majority decision in *Yellowknee*, as with every other majority decision. Thus, I must respectfully state that I am not able to give effect to Justice Wakeling's mathematical direction.

[73] Counsel will note that I have, with one exception, only referenced Alberta Court of Appeal sentencing cases in this decision.

[74] I see no profit in considering what judges in other provinces have said when our Court of Appeal has issued so many "manslaughter by knife" sentencing decisions, not involving violations of domestic trust. I am bound by my Court of Appeal.

[75] I must also say that while I have read the decisions of my fellow Alberta trial judges, I have not found that any of them have provided some nuanced or novel approach not already commented upon by our Court of Appeal. Some of them identify a sentencing range with which they are engaged. Some do not. Some involve some similar facts, but all involve facts quite dissimilar to this case. Thus, comparisons are of limited assistance.

[76] I also wish to note another aspect of the mitigating benefit of the accused's early guilty plea. To not be forced to endure lengthy, drawn-out and uncertain proceedings has, hopefully, provided some comfort to the family of the deceased, three of whom provided poignant and heart-breaking victim impact statements to the Court.

Conclusion

[77] At the end, my assessment focuses largely upon two factors of great significance:

(1) The fact that this is so close to a murder conviction itself that I can fairly call it a "near murder". The circumstances of this case call for a sentence which stresses deterrence and denunciation. Rehabilitation is far down the scale.

(2) And against that significant aggravating fact (1), above, is this very early guilty plea, albeit attenuated by nonsensical claims that the accused gave, to try to explain away why he killed Mr. Younker.

[78] Working as I am, with what I believe correctly to be an 8 to 12 year range, and after regard to all of the aggravating and mitigating circumstances, I believe that factor number 1 pushes me to the upper end of that range, but factor number 2 must reduce the appropriate sentence toward the lower end of the range.

[79] Accordingly, I am satisfied that an appropriate sentence here is one of 8 years imprisonment.

Delayed Parole

[80] The Crown asks that I impose an order delaying parole release pursuant to section 743.6 of the Code. The Crown said this at paragraph 68 of her submissions:

> Due to Mr. Mathers' high moral culpability and the calculated execution of this offence, the comments he made painting himself as a victim during his interview, (such as suggesting that Younker had a weapon at the time and it must have been secreted by the woman he was with), as well as his history of escaping lawful custody, obstructing a peace officer and failing to comply with conditions, the Court may wish to make an order restricting his parole eligibility.

[81] I will not do so.

[82] Let us remember that the escaping lawful custody was a training school escape as a juvenile and the obstruct peace officer and bail violation convictions occurred when he was 20 years old. He is now 34 years old.

[83] Neither those dated convictions nor the facts in this case nor what I can determine about the accused's character or other circumstances would suggest that I should make such an order as the Crown requests.

[84] The fact that he lied to the police when claiming his own potential victimization is not a particular novelty. Criminals lie. It's not evidence of a personality disorder. It's just a sign of how desperate a situation he found himself in when talking to a police officer, and it happens on a daily basis for police officers I am sure.

[85] Accordingly, that application is dismissed.

[86] From the 8-year sentence, credit for presentence custody must be given. On a 1.5 to 1 ratio, counsel computed it to be 9.8 months credit when submissions were made on November 25. It is now November 29. I will therefore grant credit of 10 months as against the 8-year sentence. Accordingly, the accused, as of today, has 8 years less 10 months yet to serve. Otherwise stated, he has 7 years and 2 months more to serve.

Ancillary Orders

[87] There will be no victim fine surcharge, as the accused does not and will not have the means to pay it.

[88] A DNA order will issue, as this is a primary designated offence.

[89] There will also be a lifetime section 109 prohibition order.

[90] At the defence request, it is recommended the accused serve his time at Matsqui Institute in British Columbia, in order to be closer to his family.

Oral Reasons Delivered on the 29th day of November, 2021.

E.C. Wilson
J.C.Q.B.A.

Appearances:

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for the Crown

James Lutz, QC
for the Accused